

**KELLEY DRYE & WARREN LLP**

A LIMITED LIABILITY PARTNERSHIP

**TYSONS CORNER**

**8000 TOWERS CRESCENT DRIVE**

**SUITE 1200**

**VIENNA, VIRGINIA 22182**

(703) 918-2300

FACSIMILE

(703) 918-2450

www.kelleydrye.com

NEW YORK, NY  
WASHINGTON, DC  
CHICAGO, IL  
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DIRECT LINE: (703) 918-2465

EMAIL: jkarp@kelleydrye.com

**RECEIVED**

**MAR 11 2005**

**Federal Communications Commission  
Office of Secretary**

March 10, 2005

**VIA ELECTRONIC FILING AND HAND DELIVERY**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

**Re: WC Docket No. 04-313 and CC Docket No. 01-338, Access to  
Confidential Materials — Response to SBC Objection to Mark R.  
Koppersmith and Michael Parker**

Dear Ms. Dortch:

On behalf of XO Communications, Inc. ("XO"), I am responding to the objection lodged by counsel for SBC Communications, Inc. ("SBC") seeking to bar XO employees, Mark R. Koppersmith and Michael Parker, from obtaining access to information that SBC has designated as confidential pursuant to the Protective Order entered in this proceeding.<sup>1</sup>

On February 18, 2005, XO sent letters to SBC requesting negotiation of an amendment to each of their ICAs to incorporate the rule changes set forth in the Triennial Review Order on Remand ("TRRO").<sup>2</sup> These letters additionally requested all back-up data regarding the number of business lines and fiber-based collocators in each SBC wire center so that all Tier 1, Tier 2, and Tier 3 wire centers could be appropriately identified, verified, and incorporated as necessary into the ICA amendments. See XO Request Letters dated February 18,

<sup>1</sup> *Access to Unbundled Network Elements*, WC Docket No. 04-313, Order, DA 04-3152 (Sept. 29, 2004).

<sup>2</sup> *In the Matter of Unbundled Access to Network Elements, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Order on Remand*, WC Docket No. 04-313; CC Docket No. 01-338 (February 4, 2005)

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KELLEY DRYE & WARREN LLP

Marlene H. Dortch  
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2005 attached hereto as Exhibit A. On February 24, 2005, SBC responded, in part, to the XO Request letters refusing to provide any back-up data regarding Tier 1 or Tier 2 wire center determinations. See SBC Response Letter attached here to as Exhibit B. On March 3, 2005, SBC released its Accessible Letter Number CLECALL05-37 in which SBC claimed it would make back-up data available, but only subject to the TRRO Protective Order, limited to Counsel review with "copying prohibited". See SBC Accessible Letter attached hereto as Exhibit C. On March 7, 2005, in order to expedite XO's review of the data, "Acknowledgment[s] of Confidentiality" were sent to the law firm of Kellogg, Huber, Hansen, Todd, Evans & Figel, P.L.L.C. ("Kellogg, Huber") on behalf of, among others, Mark R. Koppersmith and Michael Parker, representatives of XO, in preparation of XO's review of the business line and fiber-based collocater count data designated as confidential by SBC pursuant to the Protective Order. XO, along with its counsel, was scheduled to review such data at 11:00 am on March 7, 2005 by verbal agreement with Kellogg, Huber. By email correspondence dated March 8, 2005, in response to inquiry by Kellogg, Huber, XO provided additional information regarding the roles and responsibilities of Mark R. Koppersmith and Michael Parker within XO, reiterating that Messrs. Koppersmith and Parker are not "involved in competitive decision-making" within XO and qualify, pursuant to Paragraphs 2 and 5 of the Protective Order, to review the confidential data. On March 8, 2005, Kelley Drye & Warren LLP ("Kelley Drye") was informed by Kellogg, Huber, by phone call and follow up email, that Messrs. Koppersmith and Parker would not be permitted to review the wire center data as SBC determined that those individuals had no need to review the information.<sup>3</sup> Later that day, Kelley Drye was sent SBC's formal objection letter, attached hereto as Exhibit D, as filed with the Commission ("SBC Objection Letter").

It is XO's firm contention that SBC must provide access to all back-up data supporting its designation of Tier 1, Tier 2, and Tier 3 wire centers without the restrictions claimed in the SBC Accessible Letter. As the Commission is aware, under the TRRO, parties to an ICA must amend such ICA pursuant to the change of law process provided for in such ICA in order to incorporate the rule changes necessitated by the TRRO. In order to fully accomplish this process, XO must be able to independently verify the wire center designations of SBC so that it may fully understand the impacts of the new Commission restrictions on dedicated transport and high capacity loops subtending prohibited wire centers, and incorporate the same into its ICA amendments with SBC.

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<sup>3</sup> Note, in an email from Kevin Walker of Kellogg, Huber sent to Jason Karp of Kelley Drye, dated March 8, 2005, 10:40 AM, SBC's counsel states:

"Per our call, SBC maintains its objection to review of the data by XO's CABS folks. As I stated, the CO codes are publicly available as well as the appropriate categories for these offices. This information can be used to assess the financial impact on XO. Also, there is no XO specific data contained in the filing nor does it contain any cost data."

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The FCC has already made clear that ILECs must provide competitively sensitive information to CLECs in connection with their negotiation of interconnection arrangements. *See* 1996 Local Competition Order, Paragraph 155.<sup>4</sup> Specifically, in Paragraph 155 of the Local Competition Order, the Commission required ILECs to share sensitive cost data and other information relevant to the negotiations notwithstanding the potentially confidential nature of the same.<sup>5</sup> Because in this circumstance, the data relied upon by SBC would be used by XO to verify whether the Commission's non-impairment criteria are met, the information is highly relevant to XO's full compliance with the TRRO and the negotiation of its ICA amendment with SBC. SBC is thus required to produce it through the negotiations as contemplated by the Local Competition Order. While XO does not object to reasonable non-disclosure provisions as part of the negotiation, SBC's proposed procedures, as stated in its Accessible Letter, violate the good-faith negotiation standard established in the Local Competition Order, and are overly broad and burdensome. The information requested is requested as part of Section 252 negotiations. Therefore, the procedures adopted for purposes of the Triennial Review Remand proceeding are inapplicable.

Furthermore, the Protective Order only applies to information submitted to the Commission, *and* used solely for the conduct of the Commission Proceeding, which is clearly not the circumstance at hand.<sup>6</sup> The information at issue here is to be used by the parties to an ICA, in this case XO and SBC, in order to fully negotiate a comprehensive amendment incorporating the Commission's rule changes; a use clearly contemplated by the much more lenient information disclosure principles contemplated by the Local Competition Order. Conversely, while SBC has filed the wire center data with the Commission, it was not for the Commission's use in this proceeding, but rather solely to attempt to restrict disclosure to XO and other CLECs by claiming Protective Order protection. The data filed by SBC is necessary for (a) the full and complete negotiation of an interconnection arrangement between the parties, including presentation of the data to a state commission in an arbitration proceeding if necessary and (b) for a "reasonably diligent inquiry" for self-certification that the CLEC is entitled to a UNE. It therefore needs to be disclosed to CLEC parties.

As stated above, the procedures by SBC in its Accessible Letter are overly broad and unduly restrictive. To summarize, SBC has (a) required CLECs to travel to Washington, DC to review the data, (b) limited access to the data to only those individuals that have signed the Commission Protective Order Acknowledgment, (c) prohibited any copying of the data,

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<sup>4</sup> *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, CC Docket No. 96-98 (released August 8, 1996) at ¶155.

<sup>5</sup> *Id.*

<sup>6</sup> DA 04-3152, Appendix A, Protective Order ¶ 1 and 3

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including handwritten note-taking, and (d) enforced an unreasonably narrow interpretation of the Protective Order to preclude various CLEC representatives from gaining access to the data, all without providing any substantive justification for its restrictions. Indeed, each of these restrictions is overly broad and unwarranted. Review in Washington is burdensome for some carriers and only will delay the negotiations. The Protective Order restricts access by persons "involved in competitive decision making," a standard that is vague at best, and which SBC is clearly interpreting as restrictively as possible, barring CLEC personnel that clearly are not involved in competitive decision-making, but who are instrumental from the CLEC perspective in interpreting and auditing the data. Indeed, such activities are essentially required by the TRRO as part of the ICA negotiation process and the "reasonably diligent inquiry" undertaking. Finally, designation of the data as "copying prohibited" precludes the CLEC from studying the data further or comparing it to other available data because SBC has taken the position that even note-taking is prohibited with this class of information.

Based on the express requirements of the Local Competition Order, SBC must make this wire center data immediately available to all CLEC representatives who arguably have a need for such information. The Protective Order cited by SBC is simply not applicable, or appropriate, in this circumstance. With that said, even under the requirements of the Protective Order, such data must be made available to CLEC representatives who are not involved in "competitive decision-making", like Messrs. Koppersmith and Parker. Indeed, these gentlemen are exactly the type of employees this exception contemplates.<sup>7</sup>

Under the Protective Order, in order for a party to qualify under the Permissible Disclosure clause in Paragraph 5, such party must either be Counsel, or fall within several categories, including "employees of . . . Counsel . . . assisting Counsel in this proceeding," or "outside consultants or experts retained for the purpose of assisting Counsel . . ."<sup>8</sup> In addition, under Paragraph 2, Confidential Information may be disclosed to persons who are not involved in "competitive decision-making."<sup>9</sup> Effectively, the Protective Order is intended to protect a disclosing party from use of their information by third parties in a way that could put them at a competitive disadvantage, or for any purpose not related to furtherance of the proceeding. This

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<sup>7</sup> Indeed, this interpretation of the Protective Order is expressly supported by Paragraph 2 of SBC's March 8, 2005 Letter to the Commission, in which it states "[t]he Protective Order provides that Confidential Information filed with the Commission in this proceeding may not be provided to persons 'involved in competitive decision-making.'" (Emphasis added). This position has been further supported in practice as SBC's counsel represented in a phone conversation with Kelley Drye & Warren LLP on March 7, 2005 that non-attorneys will be permitted to review the data provided such persons are not involved in competitive decision-making.

<sup>8</sup> DA 04-3152, Appendix A, Protective Order ¶ 5

<sup>9</sup> *Id.* at ¶ 2.

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concept is borne out in the requirements that Permissible Disclosure only be made to Counsel or those assisting Counsel and those not involved in competitive decision-making.

Mark Koppersmith is the Director of Telco Accounting and Planning and Michael Parker is the Senior Manager of Telco Planning, both responsible for accounting and budgeting for costs of circuits leased from other providers, and the assessment of the financial impact of regulatory changes. Indeed, their responsibilities are limited to assessing the costs of circuits that XO needs to order to service their customer base, and developing internal procedures for meeting the Commission's "reasonably diligent inquiry" standard for challenging an impairment determination. They also assist counsel as necessary in helping quantify the cost impacts of regulatory changes on their business. It is hard to imagine two people with a greater need to review the information. Neither gentleman is a member of any executive committees, or strategic decision making bodies within XO, and neither participates in XO's marketing activities, sales efforts, pricing decisions, or customer service functions. They are instructed as to what circuits need to be ordered and it is their job to determine the cost impact of those orders.

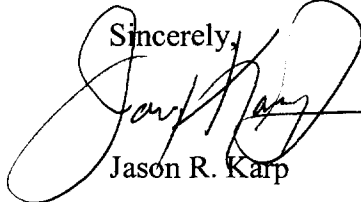
The information that SBC has deemed confidential thus would not be used by either Mr. Koppersmith or Mr. Parker to perform "competitive decision-making" functions within the company. Rather, such information would be used to understand the change in costs and types of facilities available to XO in light of the TRRO and in ensuring XO is able to engage in a "reasonably diligent inquiry" to verify whether the Commission's non-impairment criteria have been met, as required by the TRRO. Indeed, Messrs Koppersmith and Parker's functions within XO were explained in detail to SBC's counsel via phone conversation on March 8, 2005, however, SBC's Objection Letter to the Commission, in which it purports to justify barring these individuals from reviewing the wire center data, makes no mention of such job functions, but rather relies solely on an inaccurate interpretation of Messrs. Koppersmith and Parker's job titles to conclude that they are involved in "competitive decision-making." Surely SBC's claim of extreme confidentiality, without providing any justification, and simple reliance on two job titles with nothing more, isn't enough to essentially eviscerate the ICA negotiation process as originally contemplated in the Local Competition Order.

Messrs. Koppersmith and Parker should be afforded access to SBC's confidential information in order that they may assist XO in understanding and assimilating the wire center cost and UNE availability information upon which SBC relies to support a finding of impairment as contemplated under the TRRO, and incorporating the same into the parties' ICA amendments. SBC's attempts to shield crucial information from XO employees, such as Messrs. Koppersmith and Parker, with little justification for doing so, effectively precludes them from fulfilling their obligations, both to this Commission, and more importantly, to their customers.

**KELLEY DRYE & WARREN LLP**

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We therefore request that the Commission overrule SBC's objection, and immediately require that all requested data be immediately provided to all XO employees with a need to know such information to fully implement the Commission's directives in the TRRO.

Sincerely,  
  
Jason R. Karp

cc: Jeffrey Carlisle, Chief, Wireline Competition Bureau  
Michelle Carey, Wireline Competition Bureau  
Colin S. Stretch, Kellogg, Huber, Hansen, Todd & Evans, PLLC  
Chris McKee, XO Telecom, Inc.

EXHIBIT A

XO Communications

810 Jorie Boulevard  
Suite 200  
Oak Brook, IL 60523  
USA

February 18, 2005

SBC Contract Administration  
ATTN: Notices Manager  
311 S. Akard, 9<sup>th</sup> Floor  
Four Bell Plaza  
Dallas, TX 75202-5398

Re: Triennial Review Remand Order - Accessible Letters

XO Communications, Inc. ("XO"), has received SBC's Accessible Letter Number CLECALL05-019 and related letters<sup>1</sup> regarding the TRO Remand Order dated February 11, 2005 ("Notice"). In the Notice, SBC states that "as of March 11, 2005, in accordance with the TRO Remand Order, CLECs may not place, and SBC will no longer provision New, Migration or Move Local Service Requests (LSRs) for affected elements" under certain circumstances, including Dark Fiber Loops or Transport and DS1/DS3 Loops or Transport. The Notice further provides that "[t]he effect of the TRO Remand Order on New, Migration or Move LSRs for these affected elements is operative notwithstanding interconnection agreements or applicable tariffs," and any such LSRs "on or after March 11, 2005 will be rejected." Neither the FCC nor the parties' interconnection agreements ("ICAs") authorize SBC to take such unilateral action without first amending the ICAs. The Notice, therefore, violates federal law and is an anticipatory breach of SBC's agreements with XO.

SBC purports to rely on the recent FCC unbundling order, *In re Unbundled Access to Network Elements*, FCC 04-290, WC Docket No. 04-313 & CC Docket No. 01-338, Order on Remand (rel. Feb. 4, 2005) ("Triennial Review Remand Order" or "TRRO"). The Notice, however, fails to reference any provision in the TRRO that permits SBC to implement its interpretation of that Order without amending its ICAs. Such an omission is not surprising given that the FCC expressly held to the contrary.

The FCC stated, "We expect that incumbent LECs and competing carriers will implement the Commission's findings as directed by Section 252 of the Act. Thus, carriers must implement changes to their interconnection agreements consistent with our conclusions in this Order. . . . Thus, the incumbent LEC and competitive LEC must negotiate in good faith regarding any rates, terms, and conditions necessary to implement our rule changes." TRRO ¶ 233

<sup>1</sup> CLECALL 05-017, 05-018, 05-019 and 05-020



XO Communications



(footnote omitted and emphasis added). Far from authorizing SBC to implement the TRRO unilaterally, the FCC has required that SBC negotiate with XO to amend their ICAs to incorporate the most recent changes to the FCC's rules.

The transition plans set forth in the TRRO also expressly apply to the ICA amendment process. The Order provides that "carriers have twelve months from the effective date of this Order to **modify their interconnection agreements**, including completing any change of law process." TRRO ¶¶ 143 & 196 (emphasis added). The FCC thus established the transition period to provide the time required for SBC and XO to amend their interconnection agreements, not just to transition affected UNEs to alternative facilities or arrangements.

Nor could the TRRO's provisions otherwise be self-effectuating as SBC assumes in the Notice. The Order states, "Of course, the transition mechanism adopted here is simply a default process, and pursuant to section 252(a)(1), carriers remain free to negotiate alternative arrangements superseding this transition period." TRRO ¶¶ 145 & 198. SBC may not unilaterally implement the TRRO transition plan when that period has been established to provide time to amend the ICAs and the entire transition plan itself is subject to being replaced by a plan negotiated or arbitrated between the parties.

XO has no interest in unreasonably delaying implementation of changes in federal law. Indeed, SBC has yet to implement effective provisions of the Triennial Review Order, including commingling and conversions of special access services to UNEs, and XO seeks expeditiously to incorporate those requirements into the parties' ICAs. Accordingly, XO by way of letters to SBC dated February 18<sup>th</sup>, 2005, has formally requested that SBC engage in negotiations to amend those ICAs to conform to current legal requirements.

Pending the outcome of those negotiations, however, XO expects SBC to comply with the existing ICAs. If SBC refuses to process XO's orders for UNEs, XO will view such failure as unlawful and an act of bad faith, and XO will immediately take appropriate legal and regulatory actions.

Sincerely,

A handwritten signature in cursive script that reads "Kristin U. Shulman".

Kristin U. Shulman  
Executive Director – Regulatory Affairs

Cc: Larry Cooper  
Cheryl Woodward-Sullivan

February 18, 2005

**VIA OVERNIGHT MAIL**

SBC Contract Administration

ATTN: Notices Manager  
311 S. Akard, 9<sup>th</sup> Floor  
Four Bell Plaza  
Dallas, TX 75202-5398

Attached are separate notices from XO Communications Services, Inc. requesting SBC begin good-faith negotiations under Section 252 of the 1996 Telecom Act directed toward reaching a mutually agreeable ICA amendment that fully and properly implements the changes that have occurred as a result of the *Triennial Review Remand Order*, and to the extent necessary the *Triennial Review Order*. Attached are individual notices from XO Communications Services, Inc., on behalf of and/or as successor in interest to:

XO Illinois, Inc.	Allegiance Telecom of Illinois, Inc.	Coast to Coast Telecommunications, Inc.
XO Michigan, Inc.	Allegiance Telecom of Michigan, Inc.	
XO Ohio, Inc.	Allegiance Telecom of Ohio, Inc.	
XO Texas, Inc.	Allegiance Telecom of Texas, Inc.	
XO Missouri, Inc.	Allegiance Telecom of Missouri, Inc.	
XO California, Inc.	Allegiance Telecom of California, Inc.	
XO Indiana, Inc.		
XO Wisconsin, Inc.		
XO Oklahoma, Inc.		
XO Arkansas, Inc.		
XO Kansas, Inc.		
XO Connecticut, Inc.		
XO California, Inc.		

XO Communications, Inc.

11111 Sunset Hills Road  
Reston, VA 20190  
USA

February 18, 2005

**VIA OVERNIGHT MAIL**

SBC Contract Administration  
ATTN: Notices Manager  
311 S. Akard, 9<sup>th</sup> Floor  
Four Bell Plaza  
Dallas, TX 75202-5398

On February 4, 2005, the Federal Communications Commission ("FCC") released the text of its Order on Remand in *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338 ("*Triennial Review Remand Order*"). The rules adopted in the *Triennial Review Remand Order* constitute a change in law under the current interconnection agreement ("ICA") between XO<sup>1</sup> and Pacific Bell Telephone Company d/b/a SBC California ("SBC"). Pursuant to Section 2.1 of the Second Amendment Superseding Certain Intervening Law, Compensation, Interconnection and Trunking Provisions of that ICA, formal written notice is required to begin the process of entering into negotiations to arrive at an amendment to implement into the ICA the FCC's determinations in the *Triennial Review Remand Order*.

Accordingly, we hereby provide this notice, and request that SBC begin good-faith negotiations under Section 252 of the 1996 Telecom Act directed toward reaching a mutually agreeable ICA amendment that fully and properly implements the changes that have occurred as a result of the *Triennial Review Remand Order*. We intend that the negotiations will include the effect of any independent state authority to order unbundling on SBC's ongoing obligation to provide access to certain unbundled network elements.

XO notes that, pursuant to Section 2.1 of the Second Amendment Superseding Certain Intervening Law, Compensation, Interconnection and Trunking Provisions of the current ICA and paragraph 233 of the *Triennial Review Remand Order*, the existing terms of the parties' ICA continue in effect until such time as the Parties have executed a written amendment to the ICA. As such, XO expects that both it and SBC will continue to honor all terms and conditions of the current interconnection agreement until such time as a written amendment is executed.

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<sup>1</sup> "XO," for purposes of this notice, refers to XO Communications Services, Inc., on behalf of and/or as successor in interest to XO California, Inc.

XO™

The main company contact for these negotiations is:

Gegi Leeger  
Director Regulatory Contracts  
11111 Sunset Hills Road  
Reston, VA 20190  
703-547-2109 voice  
703-547-2300 facsimile  
Email: gegi.leeger@xo.com

Please initiate the internal processes within SBC that will facilitate this request, and respond to this letter as expeditiously as possible with written acknowledgement of your receipt so that we may begin the negotiation process.

Further, in order to timely incorporate the *Triennial Review Remand Order's* rules into our revised interconnection agreement, the wire centers in your operating areas that satisfy the Tier 1, Tier 2, and Tier 3 criteria for dedicated transport and DS1 and DS3 loops must be identified and verified. Accordingly, XO hereby requests that SBC provide all backup data necessary to verify the number of lines and the identity of the fiber-based collocators by end office for each end office that SBC claims fall within each tier as those tiers are defined in the *Triennial Review Remand Order*. This data should be provided by no later than Friday, February 25, 2005.

Sincerely,



Gegi Leeger  
Director Regulatory Contracts

XO Communications, Inc.

11111 Sunset Hill Road  
Reston, VA 20190  
USA



February 18, 2005

**VIA OVERNIGHT MAIL**

SBC Contract Administration  
ATTN: Notices Manager  
311 S. Akard, 9<sup>th</sup> Floor  
Four Bell Plaza  
Dallas, TX 75202-5398

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Accordingly, we hereby provide this notice, and request that SBC begin good-faith negotiations under Section 252 of the 1996 Telecom Act directed toward reaching a mutually agreeable ICA amendment that fully and properly implements the changes that have occurred as a result of the *Triennial Review Remand Order*. In addition, formal notice is hereby being given for purposes of again commencing negotiations on the changes in law implemented by the *Triennial Review Order* that were unaffected by the *Triennial Review Remand Order*.<sup>2</sup> We intend that the negotiations will include the effect of section 271 of the 1996 Telecom Act on SBC's ongoing obligation to provide access to certain unbundled network elements, as well as independent state authority to order unbundling.

<sup>1</sup> "XO," for purposes of this notice, refers to XO Communications Services, Inc., on behalf of and/or as successor in interest to XO Wisconsin, Inc.

<sup>2</sup> The inclusion of changes in law implemented by the *Triennial Review Order* in this request should not be construed as a waiver of any right XO may have, and XO hereby reserves all such rights, to seek immediate relief for SBC's continued refusal, after months of negotiation between the parties, to implement those provisions of the TRO not affected by appeal or vacatur.



XO notes that, pursuant to Section 2.1 of the Second Amendment Superseding Certain Intervening Law, Compensation, Interconnection and Trunking Provisions of the current ICA and paragraph 233 of the *Triennial Review Remand Order*, the existing terms of the parties' ICA continue in effect until such time as the Parties have executed a written amendment to the ICA. As such, XO expects that both it and SBC will continue to honor all terms and conditions of the current interconnection agreement until such time as a written amendment is executed.

The main company contact for these negotiations is:

Gegi Leeger  
Director Regulatory Contracts  
11111 Sunset Hills Road  
Reston, VA 20190  
703-547-2109 voice  
703-547-2300 facsimile  
Email: [gegi.leeger@xo.com](mailto:gegi.leeger@xo.com)

Please initiate the internal processes within SBC that will facilitate this request, and respond to this letter as expeditiously as possible with written acknowledgement of your receipt so that we may begin the negotiation process.

Further, in order to timely incorporate the *Triennial Review Remand Order's* rules into our revised interconnection agreement, the wire centers in your operating areas that satisfy the Tier 1, Tier 2, and Tier 3 criteria for dedicated transport and DS1 and DS3 loops must be identified and verified. Accordingly, XO hereby requests that SBC provide all backup data necessary to verify the number of lines and the identity of the fiber-based collocators by end office for each end office that SBC claims fall within each tier as those tiers are defined in the *Triennial Review Remand Order*. This data should be provided by no later than Friday, February 25, 2005.

Sincerely,

A handwritten signature in black ink, appearing to read 'Gegi Leeger'.

Gegi Leeger  
Director Regulatory Contracts

XO Communications, Inc.

11111 Sunset Hills Road  
Reston, VA 20190  
USA

February 18, 2005

**VIA OVERNIGHT MAIL**

SBC Contract Administration  
ATTN: Notices Manager  
311 S. Akard, 9<sup>th</sup> Floor  
Four Bell Plaza  
Dallas, TX 75202-5398

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Accordingly, we hereby provide this notice, and request that SBC begin good-faith negotiations under Section 252 of the 1996 Telecom Act directed toward reaching a mutually agreeable ICA amendment that fully and properly implements the changes that have occurred as a result of the *Triennial Review Remand Order*. In addition, formal notice is hereby being given for purposes of again commencing negotiations on the changes in law implemented by the *Triennial Review Order* that were unaffected by the *Triennial Review Remand Order*.<sup>2</sup> We intend that the negotiations will include the effect of section 271 of the 1996 Telecom Act on SBC's ongoing obligation to provide access to certain unbundled network elements, as well as independent state authority to order unbundling.

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<sup>1</sup> "XO," for purposes of this notice, refers to XO Communications Services, Inc., on behalf of and/or as successor in interest to Allegiance Telecom of California, Inc.

<sup>2</sup> The inclusion of changes in law implemented by the *Triennial Review Order* in this request should not be construed as a waiver of any right XO may have, and XO hereby reserves all such rights, to seek immediate relief for SBC's continued refusal, after months of negotiation between the parties, to implement those provisions of the TRO not affected by appeal or vacatur.

XO<sup>TM</sup>

XO notes that, pursuant to Section 2.1 of the Second Amendment Superseding Certain Intervening Law, Compensation, Interconnection and Trunking Provisions of the current ICA and paragraph 233 of the *Triennial Review Remand Order*, the existing terms of the parties' ICA continue in effect until such time as the Parties have executed a written amendment to the ICA. As such, XO expects that both it and SBC will continue to honor all terms and conditions of the current interconnection agreement until such time as a written amendment is executed.

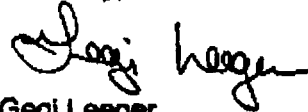
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703-547-2300 facsimile  
Email: [gegi.leeger@xo.com](mailto:gegi.leeger@xo.com)

Please initiate the internal processes within SBC that will facilitate this request, and respond to this letter as expeditiously as possible with written acknowledgement of your receipt so that we may begin the negotiation process.

Further, in order to timely incorporate the *Triennial Review Remand Order's* rules into our revised interconnection agreement, the wire centers in your operating areas that satisfy the Tier 1, Tier 2, and Tier 3 criteria for dedicated transport and DS1 and DS3 loops must be identified and verified. Accordingly, XO hereby requests that SBC provide all backup data necessary to verify the number of lines and the identity of the fiber-based collocators by end office for each end office that SBC claims fall within each tier as those tiers are defined in the *Triennial Review Remand Order*. This data should be provided by no later than Friday, February 25, 2005.

Sincerely,



Gegi Leeger  
Director Regulatory Contracts



XO Communications, Inc.

11111 Sunset Hills Road  
Reston, VA 20190  
USA

February 18, 2005

**VIA OVERNIGHT MAIL**SBC Contract Administration  
ATTN: Notices Manager  
311 S. Akard, 9<sup>th</sup> Floor  
Four Bell Plaza  
Dallas, TX 75202-5398

On February 4, 2005, the Federal Communications Commission ("FCC") released the text of its Order on Remand in *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338 ("*Triennial Review Remand Order*"). The rules adopted in the *Triennial Review Remand Order* constitute a change in law under the current interconnection agreement ("ICA") between XO<sup>1</sup> and Illinois Bell Telephone Company d/b/a/ SBC Illinois ("SBC"). Pursuant to Section 2.1 of the Second Amendment Superseding Certain Intervening Law, Compensation, Interconnection and Trunking Provisions of that ICA, formal written notice is required to begin the process of entering into negotiations to arrive at an amendment to implement into the ICA the FCC's determinations in the *Triennial Review Remand Order*.

Accordingly, we hereby provide this notice, and request that SBC begin good-faith negotiations under Section 252 of the 1996 Telecom Act directed toward reaching a mutually agreeable ICA amendment that fully and properly implements the changes that have occurred as a result of the *Triennial Review Remand Order*. In addition, formal notice is hereby being given for purposes of again commencing negotiations on the changes in law implemented by the *Triennial Review Order* that were unaffected by the *Triennial Review Remand Order*.<sup>2</sup> We intend that the negotiations will include the effect of section 271 of the 1996 Telecom Act on SBC's ongoing obligation to provide access to certain unbundled network elements, as well as independent state authority to order unbundling.

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<sup>1</sup> "XO," for purposes of this notice, refers to XO Communications Services, Inc., on behalf of and/or as successor in interest to Allegiance Telecom of Illinois, Inc.

<sup>2</sup> The inclusion of changes in law implemented by the *Triennial Review Order* in this request should not be construed as a waiver of any right XO may have, and XO hereby reserves all such rights, to seek immediate relief for SBC's continued refusal, after months of negotiation between the parties, to implement those provisions of the TRO not affected by appeal or vacatur.

XO™

XO notes that, pursuant to Section 2.1 of the Second Amendment Superseding Certain Intervening Law, Compensation, Interconnection and Trunking Provisions of the current ICA and paragraph 233 of the *Triennial Review Remand Order*, the existing terms of the parties' ICA continue in effect until such time as the Parties have executed a written amendment to the ICA. As such, XO expects that both it and SBC will continue to honor all terms and conditions of the current interconnection agreement until such time as a written amendment is executed.

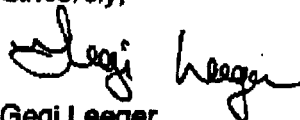
The main company contact for these negotiations is:

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11111 Sunset Hills Road  
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Sincerely,

A handwritten signature in cursive script that reads 'Gegi Leeger'.

Gegi Leeger  
Director Regulatory Contracts

XO Communications, Inc.

11111 Sunset Hills Road  
Reston, VA 20190  
USA

February 18, 2005

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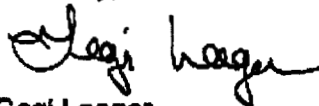
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Sincerely,

A handwritten signature in black ink that reads "Gegi Leeger".

Gegi Leeger  
Director Regulatory Contracts



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11111 Sunset Hills Road  
Reston, VA 20190  
USA

XO™

February 18, 2005

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